

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.100/2804/2016

New Delhi this the 17th day of November, 2016.

HON'BLE MR. JUSTICE M.S.SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)

1. Dr. Vinay, Aged about 23 years,
S/o. Sh. Ram Singh
R/o. RZ-148, L-Block, Vijay Enclave,
Palam, New Delhi.
2. Dr. Smriti Ridhi, Aged about 42 yrs.
D/o. Sh. Mritunjay Kumar
R/o. 94, 3rd Floor, Arbindo Apartments,
Adchini, Near NCERT Gate No. 1, New Delhi.
3. Dr. Shweta, Aged about 24 yrs.
D/o. Sh. Shyam Lal Mittal
R/o. G-23/195-196, Sector-7, Rohini, Delhi.
4. Dr. Anu Sharma, Aged about 24 yrs.
D/o. Kulbhushan
R/o. 122-A/8, IInd Floor, Gautam Nagar,
New Delhi.
5. Dr. Bharti Ramani, Aged about 24 yrs.
D/o. Sh. Rajesh Ramani,
R/o. G-20/284-285, Sector-7,
Rohini, Delhi. ... Applicants

(Argued by: Shri U. Srivastava, Advocate)

Versus

1. Govt. of NCT Delhi through the Principal Secretary,
Delhi Secretariat, New Delhi.
2. The Secretary Services
H&FW, 9th Floor, Delhi Secretariat,
New Delhi.
3. The Medical Superintendent
Dr. Baba Saheb Ambedkar Hospital
Govt. of NCT Delhi, Sector-VI,
Rohini, Delhi. ... Respondents

(By Advocate: Ms. Sangeeta Rai)

O R D E R (ORAL)

Justice M.S. Sullar, Member (J)

The crux of the facts and material, culminating in the
commencement & relevant for disposal of the instant

Original Application (OA), and emanating from the record, is that, in pursuance of advertisement dated Nil (Annexure A-1) and consequent upon clearing the written test & recruitment process, the applicants, Dr. Vinay and Others were selected and appointed on the basis of merit as Junior Resident Doctors (Dental). They were appointed on ad hoc basis against the vacant posts in the pay scale of Rs.15600-39100 Grade Pay of Rs.5400 plus allowances as admissible for a period of 89 days or till the date of joining of regular recruited doctors, whichever is earlier, vide selection list (Annexure A-2) and offer of appointment dated 17.02.2016 (Annexure A-3) in Dr. Baba Ambedkar Hospital, Sector-6, Rohini, Delhi-110085.

2. The applicants claimed that, they have been serving with the respondents to the entire satisfaction of their superior officers, and have their unblemished service record. After completion of initial period of 89 days, the applicants moved representation (Annexure A-4 Colly) for further extension of tenure.

3. As a consequence thereof, the tenure of the applicants was extended for another period of 89 days, i.e. upto 22.08.2016 by the respondents. They again represented and requested for further extension of their tenure period, which was completed on 22.08.2016. But instead of accepting their request to extend their period, the respondents intend to replace them by the candidates from the waiting list on ad hoc basis. The applicants again submitted their representation (Annexure

A-5 Colly) to redress their grievances to the authorities. It was alleged, that the action of the respondents, to replace the applicants with the candidates from the waiting list is arbitrary, illegal, without jurisdiction and contrary to the proposition of law, i.e., one set of ad hoc and temporary employees cannot be replaced by another set of ad hoc/temporary employees, except the employees already employed, are not working satisfactorily. The respondents have illegally refused to extend the period of residentship of the applicants.

4. Aggrieved thereby, the applicants have preferred the instant OA, challenging the impugned action of the respondents, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, on the following grounds:

“5.1 That it reveals from face of records that the applicants who has applied and were duly appointed with the respondents as Junior Residents (Dental) on ad hoc basis after completion of all the requisite formalities in accordance with the relevant rules and instructions on the subject.

5.2 That the initial tenure of appointment of the applicants on ad hoc basis was for a period of 89 days or till regular junior resident joins in the dental department, whichever is earlier.

5.3 That the applicants have been serving with the respondents satisfactorily having their unblemished services further due to meritorious services the tenure of the applicants have been extended for a further period of 89 days consequently the applicants are still continuing and the present tenure is upto 22.08.16.

5.4 That the applicants whose tenure is completing on 22.08.16 submitted representations to the respondents requesting for further extension of tenure but the respondents instead of considering and extending the same trying to replace the applicants by another set of ad hoc employees whose names are appearing in the same list from which the applicants have been selected but at the place named as list of waitlisted candidates.

5.5 That it is well settled law of the land that a set of ad hoc or temporary employees shall not be replaced by another set of ad hoc or temporary employees except if the employees are not working satisfactorily. *Piara Singh Vs. State of Haryana* (1992) 4 SCC 118.

5.6 That the case of the applicants is squarely covered by the law laid down by the Hon'ble Full Bench of CAT (PB) New Delhi in OA No. 1184/09 titled as *Praveen Khan & Ors. Vs. Govt. of NCT of Delhi & Ors.*

5.7 That the inaction of the respondents not to considering and finalizing the request of the applicants from the persons who are the waitlisted candidates, in such a manner is illegal, unjust, arbitrary, mala fide, unconstitutional, against the principles of natural justice, violative of article 14, 16 and 21 of the Constitution of India and against the mandatory provisions of law.”

5. On the strength of aforesaid grounds, the applicants sought to quash the impugned action of the respondents in the manner indicated hereinabove.

6. The respondents refuted the claim of the applicants, and filed their reply, wherein, it was pleaded as under:-

“1. That it is submitted that the replying respondents crave leave to submit preliminary objections on the basis of application under reply herein.

2. That the applicant has not been able to indicate violation of any rule, Constitutional provisions and/or binding instruction and thus no cause of action has accrued in favour of the applicant under reply is misuse of process of law and deserves to be dismissed with cost.

3. That it is submitted that the application under reply is not maintainable in the absence of locus standi and in view of the law laid down by the Hon’ble High Court of Delhi in Kuldeep Singh Vs. Union of India WP(C)4266/2012 & in view of the fact that “an Application under Section 19 of the Administrative Tribunals Act, 1985 can only be filed by a person aggrieved and not by any one who is stranger to the cause in question”.

4. That it is submitted that the application under reply is not maintainable, in view of the fact that the applicant has not challenged the policy decision of the Govt.

5. That it is submitted that the application under reply is not maintainable, being without any cause of action or proof on behalf of the applicants that there is violation of any fundamental or statutory rights.

6. That the action of the replying respondents is just, proper and bonafide and in accordance with the rules, instructions and also law declared by the Hon’ble Apex Court and there is no reason or justification for this Hon’ble Tribunal to entertain the application under reply under its extra-ordinary power of judicial review. Thus, the OA deserves to be dismissed being devoid of any merits.

7. That Junior Resident doctors are trainee doctors. They are governed by Residency Scheme of GOI/GNCTD. It is a tenure post wherein young untrained doctors are given practical training for specified period. The maximum permissible tenure of Junior Resident in Dental Department is fixed at six month.

8. That it is submitted that the tenure may be extended if new candidates are not available in exceptional circumstances only. Here new candidates are available in plenty. Extending tenure of these plaintiffs beyond permissible limit would be gross injustice to new dental graduates, who are waiting for their turn to do Junior Residency.”

7. Virtually acknowledging the factual matrix and reiterating the validity of the impugned action, the respondents have stoutly denied all other allegations and

grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the records with their valuable help and after considering the entire matter, we are of the firm view, that the instant OA deserves to be allowed, for the reasons mentioned hereinbelow.

9. Ex-facie, the argument of learned counsel, that the applicants were appointed on ad hoc basis and since the competent authority has approved the appointment of Jr. Resident Doctors (Dental) for a duration of six months, vide letter dated 08.10.2007 (Annexure R-1), so applicants are not entitled to be retained in service, is neither tenable nor the observation of Hon'ble High Court of Delhi in **LPA 197/2013** titled as **U.O.I. and Another Vs. Satish Joshi** decided on 14.08.2013, wherein Satish Kumar, respondent (therein), was appointed as Manager (Finance and Administration) with a particular project, i.e. Removal of Barriers to Energy Efficiency Improvement in the Steel Re-rolling sector in India, funded by an International Grant from Global Environment Fund (GEF). The project was initiated in September, 2004 and was initially for a period of 5 years. Ultimately, the project was scheduled to end on 31.12.2013. On the peculiar facts, and in the special circumstances of that case, it was observed that a temporary Government servant has no right to hold the post after the closure of particular project. Possibly, no one can dispute with regard to the aforesaid observation,

but same would not come to the rescue of the respondents for the following reason.

10. As is evident from the records, that the applicants, in pursuance of advertisement (Annexure A-1) and consequent upon clearing the written test & recruitment process, they were appointed on the basis of merit, as Junior Resident Doctors (Dental) against the vacant post in the pay scale of Rs.15600-39100, Grade Pay Rs.5400 plus allowances for a period of 89 days or till the regular recruitment joins, whichever is earlier, vide offer of appointment dated 17.02.2016 (Annexure A-3). Keeping in view the satisfactory performance of the applicants, their tenure period was extended up to 22.08.2016 by the competent authority. Again, they moved representation (Annexure A-5 Colly) for further extension of their services. The respondents instead of further extending the period, intend to replace them with ad hoc candidates from the waiting list of the same very select list, which is not legally permissible.

11. This is not the end of the matter. As per policy of Central Government of 1992, applicable to Delhi Government Hospitals, a junior residentship of one year in the hospital is essential for a dental doctor. In that eventuality, it cannot possibly be saith that the applicants are not entitled to be retained in service in view of Circular dated 08.10.2007 (Annexure R-1), which is totally contrary to Central Government policy of 1992 applicable to Delhi Government Hospitals.

12. The same very issue was considered in case of similarly situated persons, ***Dr. Ankita Sharma and Others Vs. Govt. of NCT of Delhi and Others*** in ***OA No.421/2016*** decided on 13.05.2016 by a Coordinate Bench of this Tribunal. Considering the policy of 1992 of Central Government and the Circular/Instruction of the Delhi Government, it was held as under:-

“8. We have heard the learned counsels and perused the record. At the core of the controversy is the fact that 1992 policy, a copy of which has been placed on record provides for junior residentship of one year in the hospitals. The respondents have not made any averments that this policy has since been superseded. The aforementioned policy was applicable to Delhi Government Hospitals, as is clear from observations made by the Hon'ble High Court in Resident Association of AIIMS and Anr. (supra). The letter dated 07.12.2007 on which maximum reliance has been placed by the respondents, refers to another letter No.F.7/767/2007/H&FW/3795 dated 08.10.2007 by which the approval of the competent authority for appointment of Junior Resident (Dental) for a duration of six months only (in hospitals/institutions under the Health and Family Welfare Department) was conveyed. A copy of the order dated 08.10.2007 where the decision to curtail the duration of residentship was taken has not been placed on record. We are, therefore, not sure in what context that order was issued because the order dated 07.12.2007 is only a clarification regarding prospectivity of the order dated 08.10.2007. The order does not state that it was superseding the 1992 policy of junior residentship which had been adopted by the 8 OA No.421/2016 Government of Delhi and therefore, it can not be interpreted to have curtailed the tenure of Junior Residents for all times to come contrary to the existing policy. The duration of one year also makes of junior residentship compatible with the eligibility conditions normally advertised for the jobs for BDS Doctors. The six months tenure on the other hand would leave the applicants in lurch as they can neither apply for jobs nor can they apply in most of the institutions for another six months of residentship. This Tribunal while dealing with similar situation in respect of Senior Residents in OA No.160/2015 had taken a view that in the event of termination of the senior residentship of the doctors before the stipulated period of three years, they will not be able to complete senior residency and hence will not be in a level playing field when they face the job market.

XXX

XXX

XXX

10. In the circumstances, we are of the view that under the 1992 policy of the Government as adopted by the respondent -GNCTD, the applicants are entitled to continue as Junior Residents for a 9 OA No.421/2016 maximum period of one year, if they apply for the same. During the arguments, learned counsel for the respondents made a statement that 14 posts were advertised on 06.01.2016 excluded the posts held by the applicants. Respondents, therefore, should have no difficulty in extending the tenure of the applicants to allow them to complete one year of residentship”.

13. Not only that, the pointed policy of Central Government and the Circular/Instruction of Delhi

Government were again the subject matter for consideration in case ***Dr. Shilpi Malik Vs. Government of NCT of Delhi and Others*** in **OA No. 3411/2016** decided on 04.10.2016 by a Coordinate Bench of this Tribunal, wherein, it was ruled as under:-

“6. We have heard the learned counsel for parties. We find that the present case is squarely covered by the judgment in OA No.1893/2016, wherein the Tribunal relying upon its earlier judgment dated 13.05.2016 passed in OA No.421/2016 – Dr. Ankita 3 OA-3411/2016 Sharma and others v Government of NCT of Delhi and others, made the following observations:

“10. We find that the circular of the Delhi Government which is in clear conflict with the policy of the Central Government is not sustainable. However, without dealing with this circular and in tune with the earlier judgment of this Tribunal, we allow the applicant to make a fresh representation within a period of one week to Secretary, Health and Family Welfare Department, Government of NCT of Delhi. On receipt of such representation, the same shall be dealt with in accordance with the Government of India Scheme of 1992 and the observations made in the earlier OA and hereinabove. The respondents will particularly address the question of re-engagement of the applicant up to the period of one year including her earlier period of engagement. A reasoned and speaking consequential order shall be passed by the respondents within a period of thirty days from the date of receipt of representation to be filed by the applicant.”

When this judgment was not complied with, the applicant therein initiated contempt proceedings in CP No.345/2016. During the pendency of the contempt proceedings, the respondents passed an order dated 29.09.2016, which reads as under:

“This department has received the copy of the Hon’ble CAT order dated 01.06.2016 in OA No.1893/2016 titled as Dr. Paras Gupta V/s GNCT of Delhi, where the Hon’ble CAT has passed the order as below:-

“We find that the circular of the Delhi Government which is in clear conflict with the policy of the Central Government is not sustainable. However, without dealing with 4 OA-3411/2016 this circular and in tune with the earlier judgment of this Tribunal, we allow the applicant to make a fresh representation within a period of one week to Secretary, Health and Family Welfare Department, Government of NCT of Delhi. On receipt of such representation, the same shall be dealt with in accordance with the Government of India Scheme of 1992 and the observations made in the earlier OA and hereinabove. The respondents will particularly address the question of re-engagement of the applicant up to the period of one year including her earlier period of engagement. A reasoned and speaking consequential order shall be passed by the respondents within a period of thirty days from the date of receipt of representation to be filed by the applicant.”

14. Therefore, the controversy involved in the instant OA is identical and squarely covered by the indicated decisions of this Tribunal. Thus, the contrary arguments of

the learned counsel for the respondents *stricto sensu* deserves to be and are hereby repelled. The ratio of law laid down in the pointed judgments, is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.

15. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute that in the wake of advertisement (Annexure A-1) and consequent upon clearing the written test & recruitment process, the applicants were appointed on the basis of merit as Junior Resident Doctors (Dental), against the vacant posts in the pay scale of Rs.15600-39100 Grade Pay Rs.5400 plus allowances for a period of 89 days or till the regular recruitment joins, whichever is earlier, vide offer of appointment dated 17.02.2016 (Annexure A-3). Taking into consideration their good performance, their tenure period was further extended up to 22.08.2016. Thereafter, instead of extending the period of engagement of the applicants, the respondents intend to replace them by another set of ad hoc employees of the same very waiting select list.

16. Meaning thereby, that the applicants cannot be replaced by another set of ad hoc doctors. They have legitimate expectation to continue in service. This matter is no more res integra and is now well settled.

17. An identical question came to be decided in a celebrated judgment in case **State of Haryana and Others Vs. Piara Singh and Others etc. etc.**, 1992 (4) SLR 770,

wherein it was ruled that the normal rule, of course, is that regular recruitment should be made through the prescribed agency, but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such situation, efforts should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible, and an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of appointing authority.

18. Again a Full Bench of this Tribunal had an occasion to deal with the similar situation in a bunch of OAs decided on 25.03.2010 along with main **OA** bearing **No.1184/2009**. Having considered the law laid down by Hon'ble Supreme Court on the point, it was held as under:-

"4.The Supreme Court, while considering an issue regarding the regularisation of ad hoc / temporary employees in *Piara Singh Vs. State of Haryana*, 1992 (4) SLR 770 held, inter alia, that :

"Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

While considering the case of termination of services of ad hoc doctors in the Railways in a batch of appeals including *Dr. A.K. Jain & Ors. Vs. Union of India & Ors.*, 1987 (Supp) SCC 497, the Supreme Court, inter alia, observed thus:

"No ad hoc Assistant Medical Officer/ Assistant Divisional Medical Officer who may be working in the Railways shall be replaced by any newly appointed AMO/ ADMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ ADMO on ad hoc basis in any zone the existing ad hoc AMO/ ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference."

Similar issue regarding regularization of contractual teacher under NDMC was considered by Delhi High Court in *Dilip Kumar Jha & Ors. Vs. New Delhi Municipal Council* in WP (C) numbers 16499 + 16502/2004, decided on 1.09.2006. The contractual teachers were seeking directions for their regularization. The High Court dismissed the petition with the following observations:

“6. Writ petitions are accordingly dismissed, subject to the direction that the respondent will not replace the petitioners with other contractual employees and in case by virtue of regular appointment the petitioners become surplus, the respondent will follow the rule of last come first.”

5. The issue is thus well settled on the basis of the judicial precedents cited above **that a set a contractual employees shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily.** The reference is thus answered. The judgement in Ruchi Singh (supra) is overruled to this extent. The Original Applications are remitted to the DB for further adjudication.”

19. Similarly, the same view was reiterated in case ***Mani Kumari & Others Vs. The Chief Secretary and Others*** in **OA No.783/2015** decided on 19.10.2016, by this Tribunal.

20. Thus, it is held that the respondents cannot replace the applicants with another set of ad hoc employees. Their services can only be disengaged on arrival of regularly appointed Junior Resident Doctors (Dental) by the competent authority.

21. No other point, worth consideration, has either been urged or pressed for by the learned counsel for the parties.

22. In the light of aforesaid reasons, the OA is hereby accepted. The respondents are directed to extend the tenure of junior residentship of the applicants till the posting of the newly regularly recruited dental doctors. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S.SULLAR)
MEMBER (J)
17.11.2016

Rakesh